UNITED C.O.D.

Appellant

v.

THE STATE OF MISSOURI AND ST. LOUIS CITY AND COUNTY REGIONAL TAXICAB COMMISSION

Respondents

SC85537

Appeal From the Circuit Court of St. Louis City

The 22nd Judicial Circuit Court

Division 3

The Honorable Thomas C. Grady

REPLY BRIEF OF APPELLANT

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Respondents mistakenly state that an equal protection challenge to §§67.1800 through 67.1822 RSMo., was not pleaded and should be considered by this Court.

Appellants incorporate herein by reference as if fully set out herein, its Points Relied On I of its initial Brief. In Appellant's Petition for Injunction Relief and throughout the entire history of this case, Appellant has stated numerous times that the Regional Taxicab Commission and the statutes from which it was borne violate Appellant's 1st, 5th, 6th, 8th, 13th and 14th Amendment rights granted to each, individually, by the U.S. Constitution, Missouri comparable Constitutional Provisions, which include the equal protection challenge. (L.F. Vol. I, Tab 5,p 153-157). Moreover, Mo. Const. Art. 1, § 2 (2004) states with specificity the natural rights of person, and the purpose of the government and equality under the law:

That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

The Fourteen Amendment to the U.S. Constitution states,

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appellants are being adversely affected by the Regional Taxicab Commission of St. Louis City and St. Louis County, and will continue to be adversely affected until such time as this Honorable Court deems these statutes unconstitutional in that they violate the fundamental rights granted by the very foundation by which we live, the U.S. Constitution, and Missouri comparable Constitutional Provisions. Only those to whom the statute applies and who are adversely affected by it can draw in question its constitutional validity. Alabama State Federation of Labor v McAdory, 325 US 450, (1945). Appellants have suffered, are suffering, and will continue to suffer adversely. Appellants have raised the issue of the constitutionality, and the protection of their rights since the onset of this suit. As previously stated, [n]o State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis added).

Appellants agree with Respondents that a Missouri statute is *presumed* constitutional. That which appears to be so on the surface may not be so in the underlying midst. United C.O.D. has overcome its burden of showing that although on the surface the REV. MO. STAT. §§67.1800 through 67.1822 may appear to be constitutional, though once dissected, clearly show that they violate the fundamental rights of individuals vested in the taxicab industry, those who in the future may wish to earn a living with the taxicab industry, and those who have been profoundly and irreparably harmed due to the unattainable requirements of the aforementioned State Statutes. As stated in Myer v. St. Louis County, 602 S.W.2d 728, (Mo. App. E.D. 1980)[Courts] will not invalidate a statute unless it "clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied" therein. These statutes have done just that, and therefore should be deemed unconstitutional.

The taxicab industry is comprised of the working class people who are not trying to become rich, but rather make an honest living to support themselves and their families, doing what they like to do. This should be a compelling state interest and there is no doubt it is. As stated in REV. MO. STAT. §67.1804, the legislation at issue is for the public purposes of recognizing taxicab service as a public transportation system and improving the quality of the system. This clearly is a legitimate interest, however, the interest should lie in obtaining that goal by means, which would not be to the detriment of the citizens of the State, but for the betterment of the working class people in the taxicab industry, and the citizens of the State in harmony without violating the U.S or Missouri Constitutions.

It has been shown through testimony, affidavits, pleadings, and supportive memorandums that the Statutes in question do not promote the general welfare of the people, and that the Statutes deprive Appellants, as well as the citizens of this great State who reside in St. Louis City and County will be deprived of their natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that being the taxicab industry. Therefore, based on the forgoing documents submitted as aforementioned REV. MO. STAT. §§67.1800 through 67.1822 should be deemed unconstitutional.

Respondents state that in order to support a valid challenge to the statute's delegation of authority to the Commission, Appellants would have to show that the provisions in the commission's Vehicle For Hire Code are not fairly referable to its public purpose.

Appellants, United C.O.D., have made such a showing. Further, Appellants incorporate herein by reference as if fully set out herein, its Points Relied On II of its initial Brief. It cannot be said that it is fair that an individual be made to lose their livelihood due to age of his/her vehicles, raised insurance requirements, raised fees, and the exorbitant list of other requirements placed upon the drivers of taxicabs in order for him/her to make an honest days living. Due to the Appellant's inability to meet the criteria for every aspect of the guidelines being imposed by the Regional Taxicab Commission, individual taxicab drivers are becoming unemployed. This is the reality of the Statutes that are the limelight of this case. Many of these individual taxicab drivers are elderly. This is their only livelihood and even though it nets them very little in pay, it gives them spirit, pride, and a sense of belonging to the community. What could the public purpose be that is greater than a person's right to work, live, prosper, and maintain gainful employment in an industry that they enjoy and have been accustomed to all their working years? True enough, only a select few testified at trial, but to parade the vast majority of individuals into Court to testify repeatedly to the same scenario—losing their livelihood and not being to adhere to the regulations imposed by the Statutes in question, and irreparable harm caused to each individual—would have taken more than three days,

more than three weeks. The Appellants are real people, real citizens, and are really being hurt. Respondents continually cite the public purpose of improving the taxicab industry, but fail to acknowledge the injury and irreparable harm being continually placed upon the Appellants and ultimately the citizens who are consumers of this great State who rely on the taxicab industry.

Respondents repeatedly and mistakenly state that Appellants fail to challenge certain aspects of Commission's Vehicles For Hire Code, however, Appellants have. Appellants have repeatedly challenged the constitutionality, the State's interest, and the purpose of the Statutes, which enacted the Regional Taxicab Commission, which promulgated the Vehicles for Hire Code, which is the crux of the irreparable harm being placed upon them. Yes, certain key issues were stated, but Appellants are concerned with the big picture. The Appellant have repeatedly stated and made reference to the Statutes as a whole, and pointed out key issues of the Statutes, but never intended at any time to negate a fraction of any of the Statutes in question.

Respondents have explained their reasoning and rationale regarding the issues presented, but have failed miserably at showing justification for sacrificing Appellants, and citizens of this great State, and negating the fundamental rights of the Appellants granted by the U.S. Constitution as well as the Missouri Constitution. How can anyone justify taking an individual's livelihood because they cannot afford the raised insurance rates, which are beyond the Missouri State requirements of the Department of Revenue, or because they don't earn a substantial enough living to replace perfectly good running cars with newer cars even though they have passed the minimum requirement to be

placed on Missouri streets, or because they can't read or speak *fluent* English, or because the promulgation of the Regional Taxicab Commission requires funding which is maintained by raised fees passed on to the drivers of the industry, and the independent and small taxicab company owners can't afford the fees? How can the loss and irreparable harm inflicted upon the Appellants be justified? "A party has standing to challenge the validity of an ordinance only if standing is conferred by statute or another applicable ordinance or if the party can demonstrate that he is directly and adversely affected by the ordinance." Miller v. City of Manchester, 834 S.W.2d 904, (Mo.App. 1992). (citing City of Bridgeton v. Ford Motor Cr. Co., 788 S.W.2d 285, 290 (Mo. banc 1990)). Appellants have demonstrated the direct and adverse affect of these Statutes.

The injury to Appellants are apparent and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the Act, the injury would have become irreparable. Carter v. Carter Coal Co. et al., 298 U.S. 238 (1936). The injuries sustained by Appellants and that Appellants will incur are very real, continuing, and irreparable. Prevention of impending injury by unlawful action is a well recognized function of courts of equity." Id.

Therefore, based on the forgoing, REV. MO. STAT. §§67.1800 through 67.1822 should be deemed unconstitutional.

The trial court erred in not addressing Mo. Statutes §§67.1800 through
67.1822, each, as a whole because the subject of the Request for Injunctive Relief
engulfed all issues of the Statutes and the original Petition for Injunction Relief
stipulated all of the aforementioned Statutes.

Appellants incorporate herein by reference as if fully set out herein, its Points Relied On III of its initial Brief. The trial court, in its Findings of Fact, Conclusions of Law and Judgment cited Miller v. City of Manchester, 834 s.W.2d 904, (Mo.App. E.D. 1992) stating [T]he preservation of business opportunities and economic well-being are sufficient interests to confer standing to challenge the validity of a statute or ordinance. Further it stated that there is a valid and justiciable controversy between the parties over the validity of the rules and regulation promulgated by the Commission. (L.F. Vol. III, Tab 19, p. 474) However, it did not address the controversy of the parties, but rather simplistically stated the controversy existed. It did not address the heart of the issues. The Appellants have never stated that the streets of St. Louis City or County or any street of the State of Missouri are beyond regulation nor did they profess that they should not be regulated. The Appellants were being regulated prior to the promulgation of the Regional Taxicab Commission and its Code. The Appellants were and are able to meet requirements of the State of Missouri if they were as they were prior to the birth of the Regional Taxicab Commission's Code, which is overwhelming and against the betterment of the Appellants and the State. The trial court did not look at the big picture, but only a few individual. It did not look at all the concerns and the Statutes as a whole

and the ramifications of these Statutes upon Appellants, as well as other citizens of this State. The Respondents state that Appellants would be asking this Honorable Court to muster through 34 pages of Affidavits and over 20 pages of documents. The Respondents see the Appellants as black and white documents, however, the Affidavits presented to this Honorable Court represent so much more. The Affidavits represent individual people—middle-class, lower-class, working-class citizens of this State. The trial stated in ¶7 of its Findings of Fact, Conclusion of Law that plaintiff submitted no significant economic evidence. We disagree. We offered into evidence the Affidavits/people and the minute few that are among the whole of Plaintiffs to testify of the hardships and loss of income and livelihood they are being faced with. The Vehicles for Hire Code do bear a substantial and rational relationship to public health, safety, comfort and general welfare—to the detriment of a large makeup of people, including but not limited to Plaintiffs. The trial court did not rule on all the issues of Appellants Petition as previously stated. The Statutes that gave birth to the issues at hand, which remain in controversy, need to be addressed and adjudicated due to the ongoing irreparable harm that Appellants are being made to endure.

Respondents' members of the Board of the Commission demonstrated that they do have a vested interest in the success of the Commission borne by Mo. Statutes

§§67.1800 through 67.1822 and the Appellants had been and will continue to be directly and adversely affected by that vested interest.

Appellants incorporate herein by reference as if fully set out herein, its Points Relied On IV of its initial Brief. Respondents state that Appellants fail to cite any support for its assertion that one member, David McNutt, owns a company that provides taximeters for taxicabs, however, it was the testimony of Mr. McNutt as cited in the original Brief submitted by the Appellants that he does supply dispatching equipment, radios, computers, and phones. Mr. McNutt was asked whether Industrial Communications touches or is concerned with the taxi business, particularly equipment. Mr. McNutt replied, "Yeah, they own the radio equipment." Respondents are correct in that Appellants used the term "taximeter", in assumption that the terms "radios and dispatch equipment" would include taximeters. (L.F. Vol. II, Tab 10, Deposition of David McNutt, p. 9, line 1—24).

This does not take away from the fact that Mr. McNutt owns Industrial Communications; Industrial Communications sells needed equipment for the taxi industry; and the conflict of interest is obvious.

Mr. McNutt went to Jefferson City during the legislative session, and in his words was trying to "do everything I could do to make sure that if in fact, legislation was passed, that it would truly benefit the taxi drivers that are currently running." However,

when Mayor Slay spoke with him regarding his appointing Mr. McNutt to the Commission, Mr. McNutt failed to tell Mayor Slay about his ownership interest or business dealings with Laclede Cab, Gateway Taxi Management, and Gateway Taxi Services. As Mr. McNutt stated in his deposition, his business interests never came up, and he did not divulge them either. (L.F. Vol. II, Tab 10, Deposition of David McNutt, p. 14, line 3—p. 15, line13). Respondents are correct that the REV. MO. STAT. §67.1810 does provide for owner representations and driver representation, but if the statute promotes a monopoly in its representation of the Commission, then the Statute is unconstitutional.

Respondent further state that Appellants have not shown that anyone will be forced out of business. Such is not the case. Appellants have repeatedly shown that they will not be able to comply with the rules and regulations of the Regional Taxicab Commission and its rules through testimony and pleadings. The age of the vehicles has been addressed numerous times. In fact, the fact that many members of United C.O.D. will suffer irreparable harm and be forced out of business, and forced to give up their livelihood was a foundational issue of this entire case. If the drivers cannot replace their vehicles due to the age requirements of the Commission, even though the cars are deemed safe under the State of Missouri's standards, then those drivers are most definitely forced out of business for lack of ability to adhere to the rules of the Code as instituted by the Commission. It appears very beneficially to Mr. Tadesse to sell cars, especially being the owner of a taxicab company.

The apparent web of conflict of interest surrounding the appointments to the Commission of Mr. McNutt, Mr. Tadesse, and Mr. Hamilton is real. As stated previously, the Regional Taxicab Commission disregards all that the 14th Amendment guarantees to the independent cab drivers and owners. Many **will be** and **already have been** forced out of the taxicab industry because of their inability to comply with the Codes that the Commission has instituted, which directly deprives that individual of life and liberty and their pursuit of happiness. The individuals that will prosper from the Rules and Regulations of the Commission are the very individuals who have been appointed to make them and the larger taxicab companies.

CONCLUSION

As previously stated in Appellants' initial Brief, Appellants will continue to

suffer irreparable harm, damage, and injury unless the acts and conduct of

Respondents complained of are enjoined because of the restrictions and financial

hardship that is being placed upon Appellant's livelihood. The trial court did not

address all the issues at stake here. Therefore, based on the foregoing, Appellants

request this Honorable Court to render the Statutes, which are subject to this

Appeal, as unconstitutional, or in the alternative remand this case back to the trial

court for its complete ruling on all issues of the Statutes, and the irreparable harm

that Appellants are being made to endure.

Respectfully submitted,

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CERTIFICATE OF CONTENTS OF REPLY BRIEF

To the best of my knowledge, information, and belief, formed after an inquiry

reasonable under the circumstances:

Pursuant to Rule 55.03:

1. The representations and contentions in this reply brief are not presented for any

improper purpose;

2. The claims and contentions in this reply brief are warranted by existing law or

by a nonfrivolous argument for the extension, modification, or reversal of existing law or

the establishment of new law;

3. The assertions of fact in this brief have evidentiary support;

4. Any denial of a factual matter in this brief is warranted by the evidence.

This brief complies with the limitations contained in Mo. R. Civ. P. 84.06(b). The reply

brief contains 2,840 words.

The diskette filed with brief contains one file entitle Appellant's Reply Brief. Doc.

The format used is Microsoft Word. This diskette has been scanned and found to

be free of any detectable virus.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was hand delivered, this 30th day of March, 2004, to Maureen Beekley, Assistant Attorney General, 720 Olive Street, Suite 2150, St. Louis, MO 63101-2398; Cynthia L. Hoemann, Associate County Counselor, 41 South Central Ave., Clayton, Mo 63105; and Edward J. Hanlon, Deputy City Counselor, City of St. Louis, 314 City Hall, St. Louis, MO 63102.
